

IN THE MATTER OF
THANH VAN LE
1637 Morning Glory Lane
Essex, MD 21221

RE: Citation Nos. (1) E47118A – Animal At Large
(2) E47118B -- Dangerous Animal

AHB Case No. DD4974

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-22-021

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) in which the AHB upheld Citation E47118B (Dangerous Animal) and E47118A (Animal At Large). The AHB ordered that the animal at issue, “Boba”, a Belgian Malinois, become the property of Baltimore County. No monetary penalties were imposed, but the owner, Mr. Thanh Van Le was required to pay the daily boarding fees of \$16.00 per day for every day the case is under appeal.

A hearing before this Board was held on November 3, 2021. Mr. Thanh Van Le did not appear, but his attorney, Jack Ryan Terziu, appeared on his behalf. The County was represented by Marissa Merrick, Assistant County Attorney.

Background

On July 10, 2021 around 8:00 p.m., the complainant, Samantha Dockrey went for a walk in her neighborhood. Ms. Dockrey was walking on the sidewalk in front of Mr. Thanh Van Le’s house. Mr. Thanh Van Le was standing outside of his garage. Ms. Dockrey said hello to him. His dog was in the garage and barking and jumping in place. Ms. Dockrey continued to walk. All the sudden the dog charged at Ms. Dockrey and bit her on her thigh. Mr. Thanh Van Le attempted to pull his dog off her, but he could not at first because the dog’s teeth were sunk into her thigh. Eventually, he was able to pull the dog off, but the dog immediately attacked her again. The dog knocked her to the ground and continued to bite her. The dog bit her in her left thigh, left buttocks, left arm, upper abdomen,

and left groin area. Mr. Thanh Van Le could not pull the dog off her. Eventually two males came out and the three of them were able to remove the dog from her. Someone brought her a chair, and she called her husband who responded to the scene. Ms. Dockrey bled a lot, especially from her groin area. She could see the fat tissue inside of her arm. The police and an ambulance responded. Due to her injuries, she was transported to Franklin Square Hospital's Emergency Room. After waiting several hours, she was seen by the physician. She received 11 punctures and approximately 15 stitches. Ms. Dockrey stated in her testimony that she has not slept well since the attack. She stated that the incident has deeply affected her life. At the time of the hearing, her wounds were not fully healed.

Mr. Thanh Van Le testified at the AHB that he never puts the dog in front of his house. His dog is normally in the house or at back in his fenced in yard. He stated that day he let the dog in the garage to see out front. He stated the dog was chained to the door and he sat there with him. He saw Ms. Dockrey walking past his house. He stood up and grabbed his shock collar. Ms. Dockrey said hello to him, and he said hello back to her. At this point, his dog broke free and attacked Ms. Dockrey. Mr. Thanh Van Le stated that he has sent his dog to training two times in the past. The dog was wearing a choke collar and a shock collar at the time of the incident

The AHB hearing concerning the incident was held on August 17, 2021. Following the hearing, the AHB upheld the citation for Animal At Large and upheld the citation for Dangerous Animal. The AHB determined that the dog, "Boba" is in fact, a dangerous dog. The dog attacked and injured a person, exhibited aggressive and dangerous behavior, and was not adequately confined or restrained in such a way as to prevent harm resulting from his behavior. Mr. Thanh Van Le was accepting that his dog is a dangerous animal capable of inflicting great harm on the surrounding community. The AHB then considered whether the dog can safely be returned to his owner with restrictions. The AHB determined that this is not possible. Mr. Thanh Van Le could not provide any other containment plan besides utilizing his fenced-in back yard. The AHB had no confidence that

Mr. Thanh Van Le could keep his dog under control if he was returned to his custody.

After its analysis, the AHB determined that the dog, "Boba" should become the custody of Baltimore County Animal Services.

Standard of Review

BCC §12-1-114 (f) and (g) requires that all hearings before this Board from the AHB be heard on the record from the AHB hearing. Upon review of the transcript and evidence in the AHB record, this Board has the authority to:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board;
- (iii) Reverse or modify the decision of the Animal Hearing Board if a finding, conclusion or decision of the Animal Hearing Board:
 - 1. Exceeds the statutory authority or jurisdiction of the Animal Hearing Board;
 - 2. Results from an unlawful procedure;
 - 3. Is affected by any other error of law;
 - 4. Subject to paragraph (2) of this subsection, is unsupported by competent, material and substantial evidence in light of the entire record as submitted; or
 - 5. Is arbitrary and capricious.

When assessing a factual finding of an agency, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the reviewing court has no power to reject that conclusion. *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the

correctness of the agency's conclusions and may substitute the court's judgment for that of the agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery Cnty.*, 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

Decision

Based on the evidence presented at the AHB, this Board of Appeals unanimously affirms the AHB decision as to the citations. The evidence regarding the attack justifies both citations based on the findings of the AHB as stated in its minutes. This Board easily finds that "... there is substantial evidence in the record as a whole to support the [AHB's] findings and conclusions." *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, *supra.* at 698. The AHB's conclusion that Boba was an animal at large and a dangerous animal can be, and is, justified by facts in the record.

Respondent argued that the AHB's decision was not legally sufficient because they failed to consider restrictions that could be put in place. While we believe that the AHB did consider restrictions, the Code does not require said consideration. Section 12-8-103(c)(2) provides a list of what the AHB "may" order once they find an animal is a dangerous animal. Respondent's second and third arguments, that the AHB found that a fence was an insufficient restriction as a matter of law and that the AHB applied a "no confidence" standard instead of a preponderance standard in finding that no restrictions could be put in place, fall short for the same reason as their first argument. By Statute, the AHB is not required to consider restrictions, therefore, no erroneous conclusions of law. Respondent's fourth argument is that there was not substantial evidence that the animal was "at large"

as defined by Section 12-1-101(c)(1)(ii). The findings by the AHB that the animal was "at large" is supported by the record. Ms. Dockrey testified that she was on a public sidewalk and not on Mr. Thanh Van Le's property when the attack occurred.

For these reasons, the Animal Board Hearing decision is AFFIRMED as to citation E47118A (Animal at Large) and citation E47118B (Dangerous Animal) and AFFIRMED as to the AHB decision to not impose a civil monetary penalty. This Board further unanimously affirms the AHB's disposition that Boba shall become the property of Baltimore County Animal Services.

ORDER

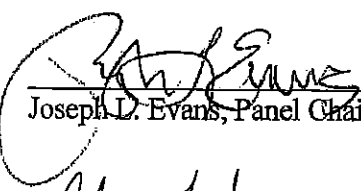
THEREFORE, IT IS THIS 4th day of January, 2022, by the Board of Appeals of Baltimore County, it is:

ORDERED that the decisions regarding Citations E47118A (Animal at Large) and citation E47118B (Dangerous Animal) and that decision that Boba become the property of Baltimore County Animal Services are **AFFIRMED**. No civil monetary penalty was imposed, and that decision is also **AFFIRMED**.

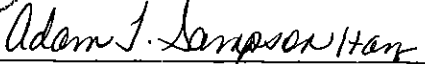
In the matter of: Thanh Van Le
Case No: CBA-22-021

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

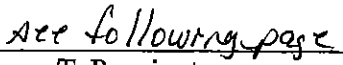
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Joseph D. Evans, Panel Chairman



Adam T. Sampson



Bryan T. Pennington

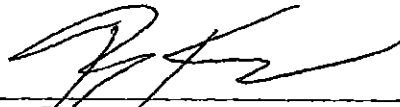
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**BOARD OF APPEALS
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Board of Appeals of Baltimore County

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January 4, 2022

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RE: In the Matter of: *Thanh Van Le*
Case No: CBA-22-021

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, reading "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Thanh Van Le
Samantha Dockrey
Bernard J. Smith, Chairman/AHB
Briana Sofia, Office Coordinator/Animal Services Division
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law